

The EPA Administrator, Lisa P. Jackson, signed the following proposed rule on 12/15/2010, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2010-0891. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 50 and 51**

**[EPA-HQ-OAR-2010-0891, FRL- ]**

**RIN 2060-AQ65**

**Reasonable Further Progress Requirements for the 1997 8-Hour  
Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** The EPA is proposing to revise the Agency's earlier interpretation of its rule regarding requirements for Reasonable Further Progress (RFP) that allowed certain emissions reductions from outside the nonattainment area to be credited toward meeting the RFP requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Specifically, EPA is proposing that states may not take credit for emission reductions from outside the nonattainment area to meet the area's RFP obligations. EPA is also taking comment on whether it would be appropriate for states to rely on emission

reductions credit from outside the nonattainment area for RFP obligations.

**DATES:** Comments. Comments must be received on or before  
[INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL  
REGISTER].

Public Hearings. If anyone contacts us requesting a public hearing on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], we will hold a public hearing. Please refer to SUPPLEMENTARY INFORMATION for additional information on the comment period and the public hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0891, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov
- Mail: Air and Radiation Docket and Information Center, Attention Docket ID No. EPA-HQ-OAR-2010-0891, Environmental Protection Agency 1301 Constitution Ave., NW, Washington, DC 20460. Mail Code: 2822T. Please include two copies if possible.
- Hand Delivery: Air and Radiation Docket and Information Center, Attention Docket ID No. EPA-HQ-OAR-2010-0891,

Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2010-0891. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment,

EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in [www.regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket and Information Center is in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. The

Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Mr. H. Lynn Dail, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (C539-01), Research Triangle Park, NC 27711, phone number (919) 541-2363, fax number (919) 541-0824 or by e-mail at [dail.lynn@epa.gov](mailto:dail.lynn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

A. Does this action apply to me?

Entities potentially affected directly by this action include state, local, and tribal governments. Entities potentially affected indirectly by this rule include owners and operators of sources of emissions [volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>)] that contribute to ground-level ozone concentrations.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the

outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at <http://www.epa.gov/air/ozonepollution/actions.html#impl> under "recent actions."

D. What information should I know about possible public hearing?

EPA will hold a public hearing only if a party notifies EPA by **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Further details concerning a public hearing for this proposed rule will be published in a separate Federal Register notice. For updates and additional information on a public hearing, please check EPA's Web site for this rulemaking at <http://www.epa.gov/ozonepollution/actions.html#impl>.

E. How is this notice organized?

The information presented in this notice is organized as follows:

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## **II. Can emissions reductions from sources located outside the nonattainment area boundary be used to meet RFP requirements?**

### A. Background

Under EPA's Phase 2<sup>1</sup> Rule, certain emission reductions from sources located outside a nonattainment area could be credited toward meeting the 1997 ozone NAAQS RFP requirement. In the preamble to that rule, EPA stated that credit could be taken for VOC and NO<sub>x</sub> emission reductions within 100 kilometers (km) and 200 km, respectively, outside the nonattainment area under certain circumstances. In addition, if a regional NO<sub>x</sub> control strategy were in place in a state, NO<sub>x</sub> reductions within that state beyond 200 km could be credited toward meeting the RFP target. In all cases, areas had to include a demonstration that the emissions from outside the nonattainment area had an impact on ozone air quality levels within the nonattainment area. EPA explained that where data indicated that emissions reductions from sources outside a nonattainment area improved ozone air quality within the nonattainment area, it was appropriate to allow states to take RFP credit for such reductions from outside the nonattainment area. This interpretation was consistent with the policy EPA had established under the 1-hour ozone standard "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM<sub>10</sub>

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<sup>1</sup> See Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2 (70 FR 71612, November 29, 2005).

NAAQS," December 29, 1997.<sup>2</sup> For a more complete discussion of EPA's rationale for applying this interpretation in the Phase 2 Rule, see 70 FR at 71647-49.

On January 27, 2006, the Natural Resources Defense Council (NRDC) filed a petition for review of EPA's Phase 2 Ozone Implementation Rule in the U.S. Court of Appeals for the District of Columbia Circuit (the Court). NRDC challenged several aspects of the Phase 2 Rule including EPA's interpretation that formed the basis of its policy for allowing credit for reductions outside the nonattainment area, namely EPA's interpretation that the intent of section 182(c)(2)(C) is to reduce ambient ozone concentrations within an area rather than to reduce emissions within the *nonattainment area*. NRDC claimed that EPA's interpretation and implementation of these provisions were both unlawful and arbitrary. NRDC also argued that the rule was arbitrary because it allowed the state to claim credit for emission reductions from selected outside-the-nonattainment-area sources without also adding emissions from other outside sources to the RFP baseline, even where those other sources impact air quality in the nonattainment area.

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<sup>2</sup> The memorandum is available on the EPA Technology and Transfer Network (TTN) Policy and Guidance page for Title I at this Web site: <http://www.epa.gov/ttn/oarpg/tlpgm.html>.

Following the conclusion of briefing in this case, EPA published a final rule implementing the NAAQS for fine particulate matter (the PM<sub>2.5</sub> Implementation Rule) where we adopted a different approach for crediting reductions from outside nonattainment areas ("outside" reductions). See 72 FR 20586 (April 25, 2007). The PM<sub>2.5</sub> Rule allows states to take credit for "outside" reductions of NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) emissions up to 200 km from the nonattainment area (and potentially VOC or ammonia as well) provided certain conditions are met, including that when taking RFP credit for emissions reductions achieved in "outside" areas, the baseline emissions inventory for the nonattainment area contain all, rather than a select few, sources in the outside area.<sup>3</sup> The primary objective of this policy was to reflect the net emission reductions in the "outside" area that could affect the nonattainment area rather than crediting only reductions from selected sources.

Following publication of the PM<sub>2.5</sub> Implementation Rule, EPA requested from the Court on July 17, 2007, a partial voluntary remand of the Phase 2 Rule to reevaluate and consider whether to

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<sup>3</sup> In addition, where state RFP plans rely on "outside" reductions to meet the RFP obligations, such plans must include a technical demonstration showing that such outside emissions significantly affected the PM<sub>2.5</sub> concentrations within the nonattainment area. And, the area outside the nonattainment area from which creditable reductions are taken must be within the state; areas outside the state but within 200 km would not be eligible for credit for RFP purposes.

revise the RFP interpretation for ozone to assure consistency with the provisions in the PM<sub>2.5</sub> Implementation Rule. In response to EPA's motion for a partial voluntary remand of the ozone RFP policy, NRDC asked the Court to also vacate this provision. On November 2, 2007, the Court issued an order that vacated and remanded the portion of the Phase 2 Rule that permitted credit for reductions of VOC and NO<sub>x</sub> from outside nonattainment areas. On August 11, 2009 (74 FR 40074), EPA issued a final rule to revise the RFP policy in the Phase 2 Rule to be consistent with the interpretation in the PM<sub>2.5</sub> Implementation rule.

Meanwhile on July 10, 2009, the Court issued its decision on the other issues in the Phase 2 Ozone Implementation Rule case. NRDC v. EPA, 571 F.3d 1245 (D.C. Cir. 2009). The Court examined the phrase "in the area" included in separate provisions relating to reductions from the application of Reasonably Available Control Technology (RACT) (CAA sections 172 (1) and 182(b)(2)). In the Phase 2 Rule, EPA had explained that because an interstate emissions trading program [the NO<sub>x</sub> state implementation plan (SIP) call's NO<sub>x</sub> budget program] would achieve beyond RACT-level NO<sub>x</sub> reductions regionally, areas did not have to meet the RACT-level reductions required under CAA section 172 (c)(1) solely from within the nonattainment area.

The Court, however, concluded that the phrase "in the area" means that reductions must occur within the area and "reductions from outside the nonattainment area do not satisfy the requirement." 571 F.3d at 1256. Although such region-wide reductions could potentially satisfy the statutory requirement that the reductions must be from sources within the nonattainment area, the Court found that EPA had not made a demonstration for all nonattainment areas within the SIP Call area showing that the regional emissions trading program did in fact produce sufficient reductions from inside each nonattainment area to represent RACT-level reductions. Id.

B. NRDC's Petition for Reconsideration of the August 2009 RFP Rule on Credits for Outside Reductions

Following the Court's decision, on October 9, 2009, NRDC filed a petition with EPA for administrative reconsideration of the August 2009 final rule revising EPA's interpretation in the Phase 2 Ozone Implementation Rule on allowing credit toward meeting the RFP requirements using emissions reductions from outside of ozone nonattainment areas. In its petition, NRDC based its objections to the rule on the following grounds: 1) the Court's decision on the RACT provisions in the Phase 2 Rule and its interpretation of the phrase "sources in the area" requires that RFP emission reductions also be achieved only from

sources within the nonattainment area; 2) EPA presented a new rationale, i.e., there is some ambiguity in the statutory provisions because they do not prohibit credits for reductions from outside the nonattainment area, for which it did not provide an opportunity for comment; 3) EPA offered a new and arbitrary rationale for its choice of the 100 and 200 km distances for "outside" reductions; 4) EPA stated a new and arbitrary rationale, i.e., creditable "outside" reductions must be reasonably expected to provide ozone air quality benefits comparable to those from reductions in the area, for evaluating "outside" reductions; and 5) EPA relied on a new rationale when it explained that sources that are outside the nonattainment area are not necessarily "nearby" for designations purposes and certain factors would need to be considered for judging whether an area is "nearby."

On May 13, 2010, EPA granted reconsideration of the rule based on NRDC's petition and stated it would initiate rulemaking to address the reconsideration. EPA is addressing the reconsideration through this proposed rulemaking. NRDC's first objection is addressed in the following section and EPA believes that the proposed action makes NRDC's other objections moot. Therefore, EPA is not addressing any of those subsequent points here.

C. EPA's Proposed Approach to Relying on Credits from Outside the Nonattainment Area to Meet the RFP Obligations and Response to the Request for Reconsideration

EPA is proposing to set aside its earlier interpretation of the RFP provisions in the August 2009 final rule and no longer permit states to rely on credit for emission reductions from outside the ozone nonattainment area to meet such an area's RFP obligations. In light of the Court's decision in NRDC discussed previously, and upon consideration of NRDC's petition for reconsideration, EPA believes that the language in the baseline emissions provision for determining the emissions reductions required for RFP purposes (CAA sections 182(b)(1)(B) and 182(c)(2)(B)) is almost identical to the language in the RACT provision (section 172(c)(1)) addressed by the Court, and thus compels a similar interpretation. All three sections contain the phrase "in the area" and in examining the RACT provision the Court found that language compelled that the reductions must come from within the nonattainment area, and that reductions from outside the nonattainment area would not satisfy the statutory requirement for reductions "in the area." We see no basis for interpreting that same clause in the RFP provisions in a different manner in light of the Court's decision.

EPA is therefore proposing that for the 1997 ozone NAAQS states may not take credit for VOC or NO<sub>x</sub> reductions occurring outside the nonattainment area for purposes of meeting the section 182(b) and (c) RFP requirements. This includes the 15 percent VOC plan requirement for Moderate and above ozone nonattainment areas in section 182(b)(1) and the additional 3 percent per year requirement for Serious and above ozone nonattainment areas in section 182(c)(2)(B).

EPA recognizes that not allowing credit for emissions reductions outside the nonattainment area will make it more challenging for some areas, such as nonattainment areas adjacent to the South Coast Air Quality Management District, namely, Coachella Valley, West Mojave Desert and Ventura County in California, to meet the RFP requirements, and may limit the extent to which regional programs can be creditable toward RFP. For ozone nonattainment areas that are not able to meet the 182(b)(1) and 182(c)(2)(B)(i) RFP requirements, the CAA allows for a lesser amount of RFP if certain conditions are met. For an area to qualify for a less than the required 15 percent emissions reduction, that state must demonstrate that, in the area, New Source Review (NSR) provisions are applicable in the same manner and to the same extent as in an Extreme area, RACT is required for all existing major sources, and the RFP plan



includes all feasible measures that can be implemented in light of technological achievability. For purposes of applying this provision, a major source is defined as a source that emits or has the potential to emit at least 5 tons per year of VOC. Similarly, for Serious and above areas to qualify for less than the required 3 percent each year of reductions in emissions to meet their RFP obligations, a state must show that the SIP includes all feasible measures that can be implemented in the area in light of technological achievability. In both instances, the state must also demonstrate that the SIP for the area includes measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. See 182(b)(1)(A)(ii) and 182(c)(2)(B)(ii).

Despite the Court's opinion in NRDC, there may remain valid policy reasons for giving states incentive to focus on obtaining emission reductions that are the most beneficial and cost effective for attaining the ozone standards. Also, there may be cases where the most beneficial and cost-effective reductions are from sources located outside the nonattainment area boundaries. In these cases, there maybe good reason to credit the emission reductions toward meeting RFP requirements. To this end, EPA is also taking comment on allowing credit for

reductions outside the nonattainment area to satisfy the RFP requirements for the 1997 and 2010 ozone NAAQS. If EPA finalizes this proposal to provide that credit cannot be taken for emission reductions from outside the nonattainment area, states that previously submitted plans that relied on such credit will need to submit new RFP demonstrations for those areas.

EPA requests comments on the proposal and the implications for the 1997 ozone NAAQS.

## **VI. Statutory and Executive Order Reviews**

### **A. Executive Order 12866: Regulatory Planning and Review.**

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "non-significant regulatory action" because it does not raise novel legal or policy issues arising out of legal mandates.

### **B. Paperwork Reduction Act.**

This action does not impose any new information collection burden. The CAA imposes the obligation for states to submit SIPs, including RFP, to implement the ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements; thus there is no information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements

contained in the existing regulations 40 CFR parts 50 and 51 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0594. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these proposed regulations on small entities, small entity is defined as: (1) a small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of these proposed revisions to the regulations on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposal will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531-1538 for state, local, and tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

#### E. Executive Order 13132: Federalism.

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulator policies that have Federalism implications." Policies that have "Federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." This action does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule, if made final, would modify the rules for implementing the 1997 8-hour ozone NAAQS. Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

In the spirit of Executive Order 13121 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA is soliciting comments on this proposal from state and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications."

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). They do not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop a SIP under these proposed regulatory revisions. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. This proposed regulation revision does not have Tribal implications. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks.

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposed revision addresses whether allowing outside the nonattainment area emission reduction credits for purposes of RFP obligations will adequately ensure attainment and maintenance of the 1997 ozone NAAQS and meet the obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive population, including children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The voluntary consensus standards are technical

standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed revision to the regulations does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or



environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The CAA imposes the obligation for states to submit SIPs, including RFP, to implement the ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements. The proposed interpretation, if promulgated, would no longer permit states to rely on credit for emission reductions from outside a nonattainment area to meet such an area's RFP obligations, which are designed to protect all segments of the general population. As such, they do not adversely affect the health or safety of minority or low-income populations and are designed to protect and enhance the health and safety of these and other populations.

#### K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

#### **VII. Statutory Authority**

The statutory authority for this action is provided by sections 109; 110; 172; 181 through 185B; and 301(a)(1) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511-7511f; 42 U.S.C. 7601(a)(1)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

**LIST OF SUBJECTS**

40 CFR Part 50

Environmental protection, Air pollution control, Ozone, Particulate.

40 CFR Part 51

Air pollution control, Intergovernmental relations, Ozone, Nitrogen oxides, Volatile organic compounds.

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Dated:

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Lisa P. Jackson,  
Administrator.